

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**SWALLOW TAIL, LLC,
APPELLANT
vs.**

**THE MISSOURI DEPARTMENT OF CONSERVATION,
RESPONDENT**

DOCKET NUMBER WD79560

DATE: MARCH 7, 2017

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Division Three: James E. Welsh, Presiding Judge, Anthony Rex Gabbert, Judge and Edward R. Ardini, Jr., Judge

Attorneys:

Jeffrey R. King, for Appellant

Heidi D. Vollet, for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SWALLOW TAIL, APPELLANT

v.

THE MISSOURI DEPARTMENT OF CONSERVATION, RESPONDENT

WD79560

Cole County, Missouri

Before Division One: James E. Welsh, Presiding Judge, Anthony Rex Gabbert, Judge and Edward R. Ardini, Jr., Judge

Swallow Tail, LLC (“Swallow Tail”) filed a Petition for Damages and Injunctive Relief in the Circuit Court of Cole County, asserting multiple claims against the Missouri Department of Conservation (“Conservation Department”) and the Missouri Conservation Heritage Foundation (“Heritage Foundation”) relating to the Conservation Department’s alleged design, support, and operation of a compensatory mitigation program sponsored by the Heritage Foundation and known as the Stream Stewardship Trust Fund (“SSTF”). All claims brought against the Heritage Foundation were dismissed by the trial court. A bench trial was held, and the trial court entered findings of fact, conclusions of law, and judgment in favor of the Conservation Department and against Swallow Tail on all remaining claims. Swallow Tail appeals, alleging that the trial court misapplied article III, section 38(a) and article IV, section 43(b) of the Missouri Constitution.

AFFIRMED

Division One holds:

- (1) Any use of public funds by the Conservation Department did not violate article III, section 38(a) of the Missouri Constitution because the Conservation Department’s projects completed with the Heritage Foundation had the primary public purpose of environmental conservation and any private benefit to the Heritage Foundation was merely incidental to that public purpose.
- (2) Any funds used from the Conservation Commission Fund for projects by the Conservation Department in conjunction with the Heritage Foundation were for the specified, permissible conservation purposes outlined by article IV, section 43(b) of the Missouri Constitution.
- (3) The mitigation credits that the Heritage Foundation received as a result of the Conservation Department’s projects were an incidental benefit to the Heritage Foundation, and the proceeds from their sale are not a result of the Conservation Department’s operations such that they must be deposited into the Conservation Commission Fund under article IV, section 43(b) of the Missouri Constitution.

Opinion by: Edward R. Ardini, Jr., Judge

Date: March 7, 2017

This summary is <i>UNOFFICIAL</i> and should not be quoted or cited.
